IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4942 of 2001 (M/S)
(Old No. 1558 of 1980)

1. Chander Singh (Deceased)
1/1 Budhi Singh
1/2 Ratan Singh
Both sons of Late Chander Singh
2. Inder Singh (Deceased)
2/1 Bijan Singh
S/o Late Inder Singh ……..Petitioners

Versus

1. Ganga Singh
S/o Guman Singh
R/o Village Naitala
Patti Badahat, P.O. Naitala
District Uttarkashi.
2. Surat Singh, S/o Surjan Singh
3. Jot Singh, S/o Surjan Singh
4. Pyar Singh, S/o Surjan Singh
5. Jabar Singh (deceased)
S/o Surjan Singh
All R/o Naitala, Patti Badahat
P.O. Naitala, District Uttarkashi.
6. Gaon Sabha, Naitala through its Pradhan
P.O. Naitala, District Uttarkashi.
7. Sub-Divisional Officer, Bhatwari
at Uttarkashi.
8. Additional Commissioner, Garhwal Division
(Uttarkashi), Pauri Garhwal.
9. The Hon'ble Board of Revenue U.P.
At Allahabad. …….Respondents

Shri B.S. Negi, learned counsel for the petitioners.
Learned Standing Counsel for respondents No. 7 to 9.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioners have sought writ in the nature of certiorari, quashing

the order dated 31.12.1979 (Annexure-8 to the petition) and order dated 26.10.1979 (Annexure-7 to the petition) and order dated 19.06.1979 (Annexure-3 to the petition), passed by the Board of Revenue.

2. Heard learned counsel for the parties and perused the record.

4. Brief facts of the case, as narrated in the writ petition are that Gwalia and Moti Ram were two brothers in Village Natala, Patti Bhatwari, District Uttarkashi. Respondent Ganga Singh, alleging himself to be adopted son of third wife of Moti Ram sought his share to be partitioned, out of the property of Gwalia and Moti Ram. According to the petitioners, Ganga Singh is not adopted son of Moti Ram and his third wife (Smt. Paleti) and it is alleged that the Assistant Collector concerned and the appellate authority – Commissioner Garhwal Division, has wrongly decreed their suit for partition under Section 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950. The petitioners challenged the said orders before the Board of Revenue. The Board of Revenue appears to have dismissed the second appeal on 19.06.1979. It appears that a review petition was filed on behalf of the petitioners and the same was also dismissed vide order dated 26.10.1979. A restoration was sought by the review applicant of the review application but the same was also

dismissed by the Board of Revenue on 31.12.1979. Hence this petition.

5. A counter affidavit was filed by Ravindra lal on behalf of respondent No. 1 before the Allahabad High Court (from where the petition is received to this Court by transfer under Section 35 of U.P. Reorganisation Act, 2000, for its disposal). In the counter affidavit only this much is admitted that Gwalia Ram and Moti Ram were two brothers. Rest of the contention of the writ petition except pertaining to the impugned orders, are denied. It is stated that the impugned orders were rightly passed by the Board of Revenue.

6. In the rejoinder affidavit, filed by Ratan Singh Rana on behalf of the petitioners, the averments made in the petition are reiterated.

7. Before further discussions, it is pertinent to mention here that whether Ganga Singh (respondent No. 1) is adopted son of Moti Ram and his wife Paleti or not, this is the question of fact with regard to which there is concurrent finding of fact of the three competent revenue courts. As such, under Article 226, it is not just and proper on the part of this Court to interfere with said finding of fact. The order dated 30.09.1976, passed by Assistant Collector, Patti Bhatwari, District Uttarkashi, copy of which is

Annexure-1 to the writ petition and order dated 09.03.1978, passed by Commissioner, Garhwal Division, copy of which is Annexure-2 to the petition, clearly show that the findings recorded by the trial court are just and proper. The Board of revenue on haring the parties on second appeal, passed order dated 19.06.1979, on merits dismissing the same. The second appellate court i.e. Board of Revenue did not find any error with the findings recorded by the Assistant Collector, Patti Bhatwari, District Uttarkashi and by Commissioner, Garhwal Division.

8. Now, this Court has to see whether there is illegality in the other impugned orders dated 26.10.1979 and 31.12.1979, passed by the Board of Revenue. Copy of the order dated 26.10.1979 is annuxure-7 to the writ petition. By said order, the Board of Revenue has rejected the review petition of the petitioners, as no one pressed the review application on behalf of the review applicant. While dismissing the review application, it is observed by the Board of Revenue that the notices were sent to the Counsel for the review applicant but he refused to accept the notice and the Board had no hesitation in holding that the counsel had due knowledge of the dated when the review application listed for hearing. The order dated 31.12.1979, which is passed on restoration of review application by the Board of Revenue is Annexure-8 to the writ petition. The

restoration application was rejected, as no sufficient reason was shown by the review applicant's counsel for not being present on the date fixed (i.e. 26.10.1979) for disposal of review application. The Board of Revenue had no enmity with the review applicant to make a false observation. Otherwise also, this Court is of the view that unless there is such error apparent on the face of the record, which requires to recall the order passed, it cannot be said that the rejection of the review application is wrong. The impugned orders dated 26.10.1979 and 31.12.1979, are not one line orders rather they are well discussed and speaking one. There appears no illegality in the impugned orders passed by the Board of Revenue.

9. For the reasons as discussed above, this Court is of the view that the writ petition is liable to be dismissed. And no interference is required with the impugned orders. The writ petition is dismissed. No orders as to costs.

(Prafulla C. Pant, J.)

Dt: 25.04.2007
Sweta